

Congress of the United States
House of Representatives
Washington, DC 20515-0545

December 21, 2020

Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Commissioner Rettig,

We write to you today to request additional flexibility for taxpayers who use Dependent Care Flexible Savings Accounts (FSAs) to pay for child care and related services. With schools closed or only partially open, families face growing childcare costs, and many are struggling to find a way to keep kids engaged safely. Many programs have shifted to an online format, and it's time that we join them, allowing working parents to use FSA funds to pay for online services. Taking this commonsense step will give working parents the flexibility they need to support their children's social, emotional, and intellectual wellbeing in a safe way during the pandemic.

Dependent Care FSAs, also known as Dependent Care Assistance Programs (DCAPs), allow working parents to use pretax dollars for child care, babysitting and summer camp. These FSAs help families afford the exorbitant prices of child care programs and services, which in turn support parents struggling to manage the demands of being a working parent. The Internal Revenue Service, under your leadership, has already taken important measures during the COVID-19 pandemic to provide families the flexibility needed to continue to continue using DCAPs during this difficult time.¹ We want to thank you for the action you have already taken to alter mid-year elections for the program and to extend reimbursement periods.²

The COVID-19 pandemic has forced child care programs and summer camps to move online, but unfortunately, at this time, FSA funds cannot be used for virtual programming. Legal experts believe that this does not require a statutory solution.³ At this time, it's "unclear if virtual day care would fall under the definition of household and dependent care services that qualify for the benefits," however simple guidance could provide this clarity.⁴ All the IRS needs to do is issue straightforward guidance initiating this change and providing further flexibilities for FSAs for the duration of the public health emergency.⁵

¹ Notice 2020-29: COVID-19 Guidance Under § 125 Cafeteria Plans and Related to High Deductible Health Plans, Internal Revenue Service, Retrieved at: <https://www.irs.gov/pub/irs-drop/n-20-29.pdf>

² Internal Revenue Service, as cited.

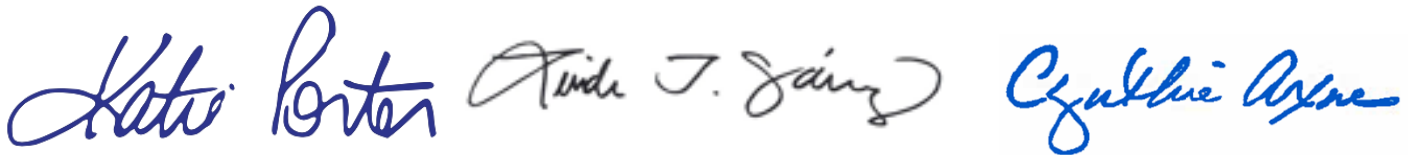
³ Lawmakers' Virtual Dependent Care FSA Request An Easy Fix, Law360, Retrieved at: https://www.law360.com/tax-authority/federal/articles/1326296/lawmakers-virtual-dependent-care-fsa-request-an-easy-fix?nl_pk=666b01be-6bd5-42c8-a119-87b4d91dc6b4&utm_source=newsletter&utm_medium=email&utm_campaign=tax-authority/federal&read_more=1

⁴ Law360, as cited.

⁵ Law360, as cited.

It is our responsibility to support families as they fight for financial security during this difficult time. Working parents are struggling to balance child care and work, and taking away financial support for programs to care for and educate their children will only make this worse.⁶ We are excited that this issue has garnered bipartisan attention, and hope to join the chorus of voices urging you to make this change.^{7,8} Thank you for attention to this important issue, and we look forward to hearing from you.

Best,



KATIE PORTER
Member of Congress

LINDA SÁNCHEZ
Member of Congress

CINDY AXNE
Member of Congress

⁶ Rep. Porter Report Details the Burden of the Pandemic on Working Women, Congresswoman Katie Porter, Retrieved at: <https://porter.house.gov/news/documentsingle.aspx?DocumentID=221>

⁷ Wenstrup Leads Effort to Increase Flexibility for DCFSA Spending, Congressman Brad Wenstrup, Retrieved at: <https://wenstrup.house.gov/updates/documentsingle.aspx?DocumentID=404452>

⁸ IRS Should Expand DCFSA Flexibility to Virtual Education Expenses, National Taxpayers Union, Retrieved at: <https://www.ntu.org/publications/detail/irs-should-expand-dcfsa-flexibility-to-virtual-education-expenses>